

JAMES B. TAYLOR
Claimant

VS.

BUTLER COUNTY
Respondent

AND

EMPLOYERS MUTUAL
Insurance Carrier

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated January 2, 1996.

ISSUES

Has claimant established that he suffered accidental injury arising out of and in the course of his employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs submitted by the parties, the Appeals Board finds that the Order of the Administrative Law Judge denying claimant's application for preliminary benefits should be affirmed.

Claimant, a jailer for the Butler County Sheriff's Department, tested positive for tuberculosis in June 1995 and believes he contracted the tuberculosis from exposure at work. The record indicates other co-workers and inmates have tested positive, but none have shown to be active positive. The positive test is indicated by a skin test not known to be active unless shown by a subsequent lung scan. The evidence further indicates that unless the individual is active positive, the individual is not contagious. Since, at this state of the proceedings, there is no evidence that claimant was exposed to any individual who was active positive, claimant has failed to sustain his burden of proving his tuberculosis arose out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 2, 1996 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, Kansas
Ronald J. Laskowski, Topeka, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director